

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/24/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000084

FILED: _____

STATE OF ARIZONA

F TYLER RICH

v.

DEBRA WELLMAN

KRISTEN M CURRY

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. 8888902

Charge: PROSTITUTION

DOB: 07/11/60

DOC: 09/12/97

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the

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trial Court, exhibits made of record and the Memoranda submitted.

Appellant, Debra Wellman, was charged with violating Phoenix City Code Section 23-52(a)(3), Manifesting an Intent to Commit an act of Prostitution, a class 1 misdemeanor. The charge was alleged to have been committed September 12, 1997 within the city of Phoenix. Between the time of the initial charge and the time the matter was scheduled for trial, several bench warrants were issued for Appellant's arrest. On February 1, 2002 the parties waived their rights to a jury trial and submitted the case to the court. Appellant was found guilty. The trial judge then proceeded to hear the allegation of prior conviction alleged by the State. At the trial on the prior, Detective Sterling testified that he was working in an undercover capacity on September 19, 1996 (the date of commission of the prior prostitution conviction). The Detective identified Appellant and stated that he specifically recalled Appellant because she stole money from another Phoenix Police detective (Det. Connell) by picking his pocket. The records of Appellant's alleged prior conviction show that the date of violation was September 19, 1996.

Appellant does not challenge her conviction, but only challenges the sufficiency of the evidence to warrant the trial court's finding at the trial on her prior convictions, that Appellant was the person who had committed the prior prostitution offense on September 19, 1996. Appellant does not challenge the certified copies of the prior conviction showing that a Debra Wellman was convicted of a prostitution offense on January 28, 1999, and the date of violation was September 19, 1996. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to

¹ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

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sustaining a conviction and all reasonable inferences will be resolved against the Appellant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Appellant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

This Court finds from the testimony of Detective Sterling that Appellant was the person in the previous prostitution case where the date of violation was September 19, 1996. It was unnecessary that the State offer fingerprint evidence to prove identification when the arresting officer from the previous

² State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

⁷ Id. At 553, 633 P.2d at 362.

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conviction was able to identify Appellant in court based upon his specific recollection of those events.

IT IS ORDERED affirming the judgment of guilt and sentence imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.